

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

<p>FUSION ELITE ALL STARS, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>VARSITY BRANDS, LLC, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2:20-cv-02600-SHL-cgc</p> <p>JURY TRIAL DEMANDED</p>
<p>JONES, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>BAIN CAPITAL PRIVATE EQUITY, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2:20-cv-02892-SHL-cgc</p> <p>JURY TRIAL DEMANDED</p>
<p>AMERICAN SPIRIT AND CHEER ESSENTIALS, INC., et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>VARSITY BRANDS, LLC, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2:20-cv-2782-SHL-cgc</p> <p>JURY TRIAL DEMANDED</p>

**PLAINTIFFS' JOINT MOTION TO FACILITATE COORDINATION OF
DEPOSITIONS IN THE RELATED ACTIONS**

COME NOW Plaintiffs Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center, Kathryn Anne Radek, Lauren Hayes, and Janine Cherasaro (collectively, “*Fusion Elite* Plaintiffs”); Plaintiffs Jessica Jones, Michelle Velotta, and Christina Lorenzen (collectively, “*Jones*

Plaintiffs”); and Plaintiffs American Spirit and Cheer Essentials, Inc., Rockstar Championships, LLC, Jeff & Craig Cheer, LLC, d/b/a Jeff and Craig Camps, and Ashley Haygood (collectively, *American Spirit* Plaintiffs”), individually and on behalf of all others similarly situated, and move this Court, for an order facilitating their coordination of depositions noticed in the above-captioned actions (the “Related Actions”). In support of this motion, the *Fusion Elite* Plaintiffs, *Jones* Plaintiffs, and *American Spirit* Plaintiffs (collectively, “Plaintiffs”) state as follows:

1. This Court has ordered Plaintiffs to coordinate discovery in its Order Establishing Plaintiffs’ Discovery Coordination Committee. (No. 20-cv-2600, Dkt. 93.)

2. Plaintiffs in the Related Actions have agreed to measures to facilitate coordination and avoid duplicative depositions, including an allowance for Plaintiffs in any of the Related Actions to attend depositions noticed in any of the other Related Actions and to use transcripts and exhibits introduced at depositions in any of the other Related Actions. Plaintiffs in the Related Actions have also agreed on time limits for depositions noticed in more than one of the Related Actions.

3. *Fusion Elite* Plaintiffs and the Varsity and USASF Defendants have entered into a stipulation setting time and numerical limits on depositions taken in the *Fusion Elite* Action.¹ (No. 20-cv-2600, Dkt. 89 at 3.) *Fusion Elite* Plaintiffs have also, in accordance with the order entered by this Court on January 26, 2021, (No. 20-cv-2600, Dkt. 93), coordinated discovery with the *American Spirit* and *Jones* Plaintiffs. However, none of the orders or stipulations in the above-captioned matters address the amount of time permitted for

¹ The term “Varsity and USASF Defendants” refers to Varsity Brands, LLC, Varsity Spirit, LLC, and Varsity Spirit Fashion & Supplies, LLC (collectively, “Varsity”) and U.S. All Star Federation, Inc. (“USASF”).

questioning when a deposition is noticed in two or more of the Related Actions pursuant to Federal Rule of Civil Procedure 30(b)(1) or 30(b)(6).

4. The Related Actions are not identical and concern non-overlapping markets, non-overlapping conduct, and non-overlapping defendants. For instance, the *Fusion Elite* action involves markets for All Star Competitions and All Star Apparel and involves only Varsity and USASF as Defendants. The *Jones* action involves three markets – competitive cheer, cheer camps, and cheer apparel in the context of both All Star gyms and school cheer. It also involves three additional defendants—Jeff Webb, Bain Capital Private Equity, and Charlesbank Capital Partners LLC. Meanwhile, the *American Spirit* action also involves the band uniform, athletic equipment, and academic regalia markets and additional defendants BSN Sports, Stanbury LLC, Herff Jones LLC, and USA Federation for Sport Cheering d/b/a USA Cheer.²

5. Witnesses in the Related Actions include current and former employees of Varsity, some of whom were also members of various USASF boards and committees. They are the custodians for thousands of documents pertaining to the claims of the *Fusion Elite* Plaintiffs as well as Plaintiffs in the other Related Actions and have a decade or more of particularized knowledge regarding the Related Actions. Given the scope of the litigation and the breadth of the witnesses' knowledge, Plaintiffs anticipate that they will require more than the seven hours ordinarily allotted by Rule 30(d)(1) for said witnesses' depositions and more than the 15 hours of Varsity 30(b)(6) testimony and 7 hours of USASF testimony agreed to for only the *Fusion Elite* case.

² Defendants in all of the Related Actions are referred to as "Defendants."

6. Rather than seeking an additional 7 hours for each percipient and corporate witness deposed in *American Spirit* and *Jones*, or refusing to coordinate at all, Plaintiffs submitted a proposal to Defendants setting forth coordination measures for depositions of overlapping witnesses taken in the Related Actions. This proposal, in addition to allowing deposition testimony to be used across actions, also allows for an additional two to four hours of questioning in the event that Plaintiffs in two or more of the Related Actions notice a deposition of a single witness pursuant to Rule 30(b)(1) and an additional three hours for Plaintiffs in each of the Related Actions to question Varsity and USASF at their 30(b)(6) depositions. Defendants rejected this proposal and insist that percipient witnesses only be questioned for a total of seven hours and that 30(b)(6) time limits not be expanded whatsoever beyond those agreed to in *Fusion Elite*.

For the above reasons and those set forth in the accompanying Memorandum of Law in Support, Plaintiffs respectfully request that this Court grant the instant Motion, facilitate the coordination of depositions among Plaintiffs in the Related Actions, and permit additional time for the questioning of percipient witnesses and corporations whose depositions are noticed in two or more of the Related Actions.

Dated: October 19, 2021

Respectfully submitted,

By: /s/ Katherine Van Dyck

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CERTIFICATE OF GOOD FAITH

Consistent with Local Rule 26(b)(1) and 7.2(a)(1).01(b)(3), counsel for Plaintiffs have attempted to resolve the issues raised in this Motion in good faith with Defendants. Plaintiffs submitted a proposal regarding deposition time on September 29, 2021, which Defendants rejected on October 1, 2021. Plaintiffs advised counsel for Defendants of their intent to file the instant motion on October 14, 2021.

/s/ Katherine Van Dyck _____

Katherine Van Dyck

CERTIFICATE OF SERVICE

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